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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,678

04/08/2004

Dean A. Cervenka

1816/40915/Case 2

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07/13/2006

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE & MARR, LTD.
105 WEST ADAMS STREET
SUITE 3600
CHICAGO, IL 60603

EXAMINER

WALTERS, JOHN DANIEL

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,678

Applicant(s)

CERVENKA, DEAN A.

Examiner

John D. Walters

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 7-9, 15, 16, 18-20, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-14, 17, 21, 22 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claims 1 – 6, 10 – 14, 17, 21, 22 and 25 have been examined. Claims 7 – 9, 15, 16, 18 – 20, 23 and 24 have been withdrawn by Applicant via election restriction.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 10 – 13, 17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hehr (6,685,204) in view of Sartori (3,610,658). Hehr discloses a hitch mounted extensible step comprising:

- a mounting member (Fig. 1, item 40);
- a step pivotally attached to said mounting member (Fig. 1, item 42);
- a step assembly is used with a vehicle including a tail gate and extends beyond said tail gate when said tail gate is in a lowered position (Fig. 5);
- at least one anti-rack bumper (Figs. 10 – 14, item 92);
- a shaft brace which mates with said mounting member (Figs. 10 – 14, item 94).

Hehr does not disclose a step which is located vertically above a bumper when in a vertical configuration. Sartori, however, discloses a stairway for a truck comprising:

- a support member having front and rear ends (Fig. 2, item 18);

- a stepping member mounted proximate said rear end of said support member (Fig. 2, item 34);
- wherein said stepping member and said support member are placed in a generally vertical position, positioned vertically above and forward of a portion of a bumper, when said step is not in use (Fig. 1);
- wherein said stepping member and said support member are placed in a generally horizontal position when said step is in use (Fig. 2);
- a release handle assembly mounted to said step (Figs. 4 and 5, item 50);
- said handle assembly securing said step member in a generally vertical position (Figs. 4 and 5);
- wherein a pivoting axis is provided at a fixed position relative to the trailer hitch assembly (Fig. 1).

In regards to claim 11, Official Notice is taken that is it old and well known to one of ordinary skill in the art that a spring is often used to positively bias and latch or pin.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the step of Sartori with the step of Hehr in order to provide a stable and sturdy yet compact step system along the rear of a vehicle.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hehr (6,685,204) in view of Sartori (3,610,658) as applied to claims 1 – 3, 10 – 13, 17, 21 and 22 above, and further in view of Hagen et al. (6,491,315). Hehr in view of Sartori does

not disclose the use of brake lights. Hagen, however, discloses a brake warning and step for bumpers comprising:

- a brake light (Fig. 1, item 28);
- said brake light being in communication with a vehicle brake light (column 2, lines 43 – 45).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the light of Hagen with the step of Hehr in view of Sartori in order to provide additional warning to following vehicles (column 1, lines 57 – 60).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hehr (6,685,204) in view of Sartori (3,610,658) as applied to claims 1 – 3, 10 – 13, 17, 21 and 22 above, and further in view of Nerem et al. (4,116,457). Hehr in view of Sartori does not disclose the use of a step light. Nerem, however, discloses a step assembly for a vehicle comprising:

- a step light (Fig. 2, item 96);
- means for activating said step light (column 4, lines 34 – 36 and 57 – 62).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the light of Nerem with the step of Hehr in view of Sartori in order to illuminate the light when said step is used and turn the light off when the step is in its non-use position in order to provide a safety feature for said step.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hehr (6,685,204) in view of Sartori (3,610,658) and Nerem et al. (4,116,457) as applied to claim 5 above, and further in view of McCoy et al. (6,783,266). Hehr in view of Sartori and Nerem does not disclose the use of a swivel bracket. McCoy, however, discloses a hitch receiver with integral lighting comprising:

- a swivel bracket (Fig. 1, item 42).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the light of McCoy with the step of Hehr in view of Sartori and Nerem in order to better focus the light where best needed on the step.

Claims 14 and 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hehr (6,685,204) in view of Sartori (3,610,658) as applied to claims 1 – 3, 10 – 13, 17, 21 and 22 above, and further in view of McCoy et al. (6,783,266). Hehr in view of Sartori does not disclose the use of a ball assembly. McCoy, however, discloses a hitch receiver with integral lighting comprising:

- a brace supporting a ball assembly (Fig. 1, items 16 and 18 & column 3, lines 30 and 31).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the ball assembly of McCoy with the step of Hehr in view of Sartori in order to further mount additional components (column 1, lines 55 – 57).

Response to Arguments

Applicant's arguments with respect to claims 1 – 6, 10 – 14, 17, 21, 22 and 25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Hamelink et al. (6,886,968) disclose a hitch illumination apparatus;
- Lippert (4,800,471) discloses a brake light attachment;
- Kimball (4,679,810) discloses a powered step assembly for vehicles;
- Cipolla (6,769,704) discloses a trailer hitch step;
- Wolf (3,392,990) discloses a retractable camper body door step;
- Powell (6,129,371) discloses a dual level hitch;
- Osborn, Sr. (4,965,704) discloses a running board light;
- Smith et al. (3,462,170) disclose a camper step construction;
- McVicar (4,767,038) discloses a support for a spare wheel of a motor vehicle;
- Aldape et al. (3,730,556) disclose a camper hitch extension;
- McCoy et al. (6,623,025) disclose a trailer hitch with trailer hitch accessory mounting assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Walters whose telephone number is (571) 272-8269. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John D. Walters
Examiner
Art Unit 3618

JDW



CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600